◦ THE HON'BLE SRI JUSTICE BILAL NAZKI

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AND

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THE HON'BLE SRI JUSTICE D.APPA RAO

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+ WP.No. 15218 OF 2005

% Dated 18.3.2006

M/s. Hyderabad Cylinders,

….Petitioner

Vs.

$ Asst. Commissioner of Commercial Taxes and others

….Respondents

! Counsel for petitioner: Mr. S.R. Ashok

^Counsel for Respondents: Mr. K. Raji Reddy, Spl.S.C. for C.T.,

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> HEAD NOTE:

? Cases referred

1. 33 APSTJ 190;

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE D.APPA RAO

WP.NO. 15218 OF 2005

Dt. 18.3.2006

Between:

M/s. Hyderabad Cylinders,

…Petitioner

and

Asst. Commissioner of Commercial Taxes and others

..Respondents

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE D.APPA RAO

WP.NO. 15218 OF 2005

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

This writ petition has been filed challenging an order of the Sales Tax Appellate Tribunal and the authorities below. The writ petitioner also sought a direction to adjust the excess tax of Rs.42,25,897/- paid in respect of the production in excess of base

year production for the period from 4.10.1998 to 17.1.2000 towards the base year tax payable for the assessment years 2000-2001 and 2001-2002 in terms of Final Eligibility Certificate dt. 17.1.2000.

The facts which have given rise to filing of this writ petition are that the petitioner undertook expansion of his industrial unit with effect from 4.10.1998. He made an application for deferment of sales tax in terms of G.O.Ms.No. 108, dt. 20.6.1996 in September, 1999. The Industries Department issued eligibility certificate to the petitioner on 17.1.2000 quantifying the deferment of sales tax benefit of Rs.3,02,65,370/- to be availed for a period of 14 years from 1998-99 to 2012-2013 for the expansion of unit with base production turnover value of Rs.42,25,897/- (1,20,000 units of cylinders). Since the application for grant of deferment was pending, the petitioner-assessee paid tax of Rs.46,73,120/- for the periods 1998-99 to 17.1.2000. The petitioner requested for adjustment of the excess tax paid for the years 1998-99 and 1999-2000 against the tax due for the assessment years 2000-01, 2001-02 and 2002-03. This request was turned down by the Assistant Commissioner of Commercial Taxes-1st respondent in the light of G.O.Ms.No. 18. The matter was taken to the 1st appellate authority and then to the Tribunal, therefore the writ petition.

The learned senior counsel appearing for the petitioner seeks adjustment of the tax paid on the ground that the petitioner has exemption from the date of commencement of commercial production which was 4.10.1998 and the eligibility certificate was issued on 17.1.2000 and it has the effect from 4.10.1998 and in between 4.10.1998 and 17.1.2000 if he has paid any tax, he is entitled to get them adjusted. The learned Government Pleader appearing for the respondents, however, submits that the controversy is covered by G.O.Ms.No.18, Industries & Commerce (I.P) Dept., dt. 30.1.1997 which is reproduced,

1. “In the G.O. first read above, Government have introduced certain Incentives for setting up of

new industries in the State under LSIS, 1989.

2. In the G.O., second read above, Government have introduced new Comprehensive Scheme of State Incentives for setting up of New Industries in A.P. under NCSSI, 1992.

3. In the G.O. 3rd read above, Government introduced a scheme of State Incentives for setting up of new Industries in the State, under “TARGET 2000”.

4. Several Industrial Units have represented that due to delay in issue of final eligibility certificate they have already paid Sales Tax during the intervening period between the date of expiry of Temporary Eligibility Certificate and date of Final Sanction of Sales Tax eligibility on demand from Commercial Taxes Department and have requested that the amount so paid may be adjusted against future dues, after expiry of the final eligibility certificate in case it is not possible to refund the sales tax already paid.

5. The proposal was placed before the SIPB meeting held on 18.1.1997 and the Board approved the proposals for adjusting Sales Tax paid by the Units during the intervening period against the future Sales Tax dues after expiry of the eligibility period provide that the amount adjusted is limited to the un-untilised balance amount of exemption/deferment sanctioned to the units under the State Incentive Scheme.

6. The Government after careful examination of the above proposal hereby order that the Sales Tax paid by the units during the intervening period (i.e., time gap between the date of expiry of Temporary Eligibility Certificate and date of final sanction of Sales Tax eligibility) be adjusted against the future Sales Tax dues payable after

expiry of the eligibility period provided that the amount of such adjustment is limited to the un-utilised balance amount of exemption/deferment sanctioned to the units under the incentive scheme, whichever is applicable to them.

7. This order issues with concurrence of Finance & Planning (FW) Department vide their U.O.No. Secretary Finance (R & E) No. 174, dt. 27.1.1997."

According to this GO, the taxes paid during the intervening period between the date of expiry of temporary eligibility certificate and date of final eligibility certificate would be adjusted against future sales tax due payable after expiry of the eligibility period. However, the learned senior counsel appearing for the petitioner argues that G.O.Ms.No.18 is not applicable as it was only applicable to new units to which temporary eligible certificates were issued and it contemplates adjustment of taxes paid in the intervening period between the date of expiry of temporary eligibility certificate and final eligibility certificate, and as such G.O.Ms.No. 18 would apply only to new units and not existing units. This interpretation obviously cannot be accepted because the benefits that are sought to be drawn by the petitioner are in terms of G.O.Ms.No. 108, dt. 20.5.1996. The expanded unit in terms of this G.O. is to be treated like a new unit. Para-7 of this G.O. deals with expansion projects and it lays down,

"Existing industrial units, in eligible areas, setting up expansion project in products other than those listed in Annexure, involving enhancement of fixed capital investment by at least 25% as well as enhancement of capacity by 25% for the products of the same product-line, will be eligible for sales tax deferral or sales tax exemption for the enhanced turnover above the base turnover as defined for a period of 14 years or 7 years respectively, subject to a ceiling of 135% of additional fixed capital investment made, from the date of commencement of commercial production by the expansion project. Base

> turn over for this purpose shall be the best production achieved during three years preceding the year of expansion or the maximum capacity expected to be achieved by the industry as per the appraisal made by the financial institution before funding the project, whichever is higher. The same limits and conditions as specified in Para 6.03 and 6.05 above will apply."

This provision itself shows that the expanded projects would be eligible for sales tax deferral or sales tax exemption for the enhanced turnover above the base turnover for a period of 14 years or 7 years respectively. Therefore for the enhanced capacity for the purpose of G.O.Ms.No. 108 the unit has to be treated as a new unit. A special reference is made to G.O.Ms.No. 108 in G.O.Ms.No. 18. Therefore it cannot be accepted that G.O.Ms.No. 18 does not apply to the existing units which expanded their activity.

Another argument made by the learned senior counsel appearing for the petitioner is that no temporary eligibility certificates are given in case of the units which expand, but only permanent eligibility certificates are issued by the department, therefore the G.O.Ms.No. 18 would not apply as it applies to the period between the date of expiry of temporary eligibility certificate and final eligibility certificate of deferment for sales tax deferment. That is true, in case of the units which expand their activity, no temporary eligibility certificate is required to be given and only a final eligibility certificate is given, but there is no difficulty in coming to the conclusion that in case of units which expand their activity, the time gap can be taken as a period for which the unit had paid the tax and the period for which eligibility certificate had not been issued. The whole purpose of giving incentives of deferment or exemption from sales tax is to give breathing time to the new unit or expanded unit to establish themselves and on this ground alone such a policy of the Government has been accepted by the Court, otherwise it appears that it is harsh on the tax payers and the tax collected from them is being allowed to be retained by an industrialist for enhancement of

his business and he pays back after 14 years without an interest to the Government. If this principle is kept in sight, then there would be no difficulty in coming to the conclusion that the treatment given to an existing industry in expansion should not be better than the one who is establishing new business. The question has already been considered by this Court in a judgment reported in *Madras Cements Ltd. Vijayawada Vs. State of Andhra Pradesh & others* . For these reasons, we do not find merit in this writ petition which is accordingly dismissed. No costs.

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BILAL NAZKI J.

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D.APPA RAO J.

Dt.18.3.2006

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